

\$~
*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

***Reserved on: 19.11.2020
Pronounced on: 04.12.2020***

+

W.P.(C) 3248/2020 & CM 11334/2020

DR. RAJESH S. GOKHALE Petitioner

Through: Ms. Tamali Wad, Advocate

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Vikrant Goyal, Advocate for
R-1.
Mr. G.D. Sharma, Advocate for R-
2.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

1. Petitioner herein has filed the present petition seeking a declaration that the inquiry proceedings initiated against him by Charge Memorandum dated 14.03.2019 under Rule 14 of the CCS (CCA) Rules, 1965 stand concluded as also for quashing the communication dated 30.04.2020 whereby the Petitioner has been informed that the cycle of disciplinary proceedings pending against him has not completed its full circle and thereafter direct Respondent No. 2 to issue vigilance clearance to the Petitioner.

2. The facts in brief as set out by the Petitioner and to the extent necessary for adjudication of the petition can be encapsulated as under :-

- a. After acquiring a Ph.D. degree from Indian Institutes of Science, Bangalore, followed by Postdoctoral Research from Stanford University, USA, Petitioner joined Respondent No. 2/National Institute of Immunology (hereinafter referred to as 'NII') in the year 1999 as Staff Scientist-IV. Petitioner's claim to fame is that he is recognized in his field for his research work in the area of Chemical Biology and is recipient of several prestigious National Awards including Infosys Prize, Shanti Swaroop Bhatnagar Prize and IIT Bombay Distinguished Alumni Award and is a Wellcome Trust International Research Fellow, UK and HHMI International Research Scholar, USA. He is also an elected fellow of three major Science Academies viz. Indian Academy of Science, Bangalore, National Academy of Sciences, India, Allahabad and Indian National Science Academy, Delhi.
- b. Currently, Petitioner is working as Staff Scientist-VII at the NII. In 2009 Petitioner was sent on deputation to the Institute of Genomics and Integrative Biology (IGIB), a Scientific Research Institute under the Council of Scientific and Industrial Research (CSIR), Department of Scientific and Industrial Research (DSIR), Government of India. He joined the Institute on 24.03.2009 and served CSIR-IGIB for more than six and half years as its Director, till his repatriation to NII on 24.11.2016.
- c. Soon after the Petitioner joined IGIB, an Office Memorandum was issued on 25.05.2009, by DSIR, formulating a Scheme for

‘Encouraging Development and Commercialization of Inventions and Innovations: A New Impetus’. Vide OM dated 30.11.2009 the Scheme was implemented in CSIR, permitting Scientific Researchers to hold equity stakes in scientific enterprises /spin offs while in professional employment with their Research and Academic Institutions and also provided exemptions from application of Rules 15, 16 & 18 of CCS (Conduct) Rules and FR-11 as well as other Rules applicable to the scientists, who were permitted by DG-CSIR to hold equity stakes in the start-up Companies.

- d. Petitioner, accordingly applied for starting M/s Vyome Bio Sciences Pvt. Ltd. (hereinafter referred to as ‘Vyome’) under the Government of India approved policy. Petitioner was granted permission by CSIR to startup the Scientific Enterprise focusing on ‘Dermatological Indications’ and to join the proposed enterprise as a ‘Non-Executive Director’. He was allowed to hold Founder equity stocks and also to render consulting services to Vyome under a Consulting Agreement, vetted and approved by CSIR.
- e. As per the Petitioner the DSIR in its 12th Five Year Plan Document (2012-2017) submitted to the Planning Commission had not only mentioned the national effort pioneered and led by CSIR/DSIR to help the Government to give nod for researchers to have equity stake in scientific enterprises and spin offs and to enjoy commercial benefits of their inventions and patents, but also mentioned that two such companies, including Vyome had already

been spun off and was managed by experienced professionals with a team of talented scientists.

- f. While the Petitioner was on deputation a Fact Finding Committee was constituted by CSIR to examine the possibility of a conflict of interest between the Petitioner's role as a Non-Executive Director of Vyome and the IGIB Projects handled by him. The Committee constituted by HOD Pharmacology, AIIMS, Former HOD, Dermatology, RML Hospital and Technical Advisor, DG CSIR met on 07.09.2016 and after evaluating the material on record, recommended that there was no conflict of interest.
- g. The Petitioner was thereafter repatriated to NII on 24.11.2016 and on the next day appeared for interview for the post of Director, NII, which according to the Petitioner triggered the spate of harassments against him, which continue till date. After a month Petitioner received an OM dated 22.12.2016 from NII, calling upon him to explain and provide details with respect to his engagement with Vyome, followed by another OM dated 03.01.2017 seeking additional information. Both were responded to by the Petitioner and requisite information was furnished.
- h. Subsequent thereto the Petitioner was served with a minor penalty Charge Memorandum dated 31.01.2017 under Rule 16 of CCS (CCA) Rules, 1965 relating to his engagement with Vyome and the Petitioner submitted his response on 09.02.2017. For two years there was no action by NII and on 13.03.2019 NII withdrew the minor penalty charge memo and instead served on the Petitioner a

Charge Memorandum dated 14.03.2019 for initiating major penalty proceedings under Rule 14 of CCS (CCA) Rules, 1965.

- i. On 12.04.2019 Petitioner submitted his detailed response denying the charges leveled against him. However, ignoring the response, the Disciplinary Authority vide order dated 04.06.2019 appointed the Inquiry Officer to conduct the inquiry proceedings as also the Presenting Officer. On 02.12.2019 the Inquiry Officer submitted his detailed Report and rendering a finding that none of the charges were proved during the inquiry. After considering the Report, the Disciplinary Authority viz. Director, NII agreed with the findings of the Inquiry Officer and issued an order on 30.01.2020, which according to the Petitioner 'exonerated' him of the charges. The exoneration was with a caveat, requiring the Petitioner to take certain corrective measures, enumerated in the order.
- j. Vide letter dated 20.02.2020 Petitioner submitted a detailed response providing the desired information.
- k. Petitioner thereafter received a letter from Translational Health Science and Technology Institute (hereinafter referred to as 'THSTI'), an autonomous Institute of Department of Biotechnology (hereinafter referred to as 'DBT'), Government of India, nominating him for the Post of Dean on deputation basis. Petitioner submitted his application to NII on 24.02.2020 to forward the same to THSTI, through proper channel.
- l. On 13.03.2020 Petitioner received an email asking him to furnish documents in support of his reply sent on 20.02.2020., which he did on the same day.

m. Instead of granting a No Objection Certificate, NII issued a communication dated 30.04.2020, informing the Petitioner that his cycle of disciplinary proceedings had not completed its full circle and hence no application for deputation/training/seminars etc. could be forwarded in the absence of vigilance clearance from CVO, NII. Petitioner who was under a bonafide impression that his agony had ended by exoneration in the inquiry proceedings, having no option approached this Court challenging the communication dated 30.04.2020 amongst other reliefs.

3. The contentions of Ms. Tamali Wad learned counsel for the Petitioner, assailing the action of NII are manifold and can be summarized as follows:

a. The Disciplinary Authority of the Petitioner, who also happened to be the Appointing Authority has, after considering the inquiry report decided to agree with the findings of the Inquiry Officer that the charges were not proved and passed an order exonerating the Petitioner and has thereafter become 'functus officio'. The decision was communicated to the Petitioner thereby bringing to close the disciplinary proceedings initiated against him. After exoneration, it is wholly illegal on the part of NII to issue the impugned communication dated 30.04.2020 informing the Petitioner that cycle of disciplinary proceedings has not completed a full circle and unless the same is completed, no application for deputation etc. can be forwarded in the absence of vigilance clearance.

- b. Once the Disciplinary proceedings have concluded it is not open for NII to withhold the Vigilance Clearance as no other adverse input in law is available or pending against the Petitioner. Vigilance Clearance can be withheld only when an employee is under suspension or a chargesheet has been issued and disciplinary proceedings are pending or where prosecution for a criminal charge is pending. Petitioner does not fall under any of the three categories and it is thus illegal to withhold Vigilance Clearance. Reliance is placed on the judgement of the Supreme Court in *UOI vs. K.V. Jankiraman 1991 (4) SCC 109*.
- c. It is no longer res integra that once the decision/order of the Disciplinary Authority is taken, published and notified or communicated, the Authority becomes 'functus officio' and proceedings stand concluded and it cannot be said that the Authority has not taken a final decision. The Disciplinary Authority in the present case has not differed with the findings of the IO and issued an order of exoneration which was communicated to the Petitioner. Once the order has been issued, it is out of the control of the office of the Disciplinary Authority and it is impermissible in law to change or modify the said order. Law is well settled that once an order is sent out of the office of the employer, even if it is not actually received by the employee, it would be deemed to be communicated. Reliance is placed on the judgement in *SBI vs. S.N. Goyal, (2008) 8 SCC 92* and *State of Punjab vs. Khemi Ram, (1969) 3 SCC 28*.

4. Mr. G.D. Sharma learned counsel for NII, on the other hand, rebutting the said contentions has made the following submissions:

- a. NII is a Society registered under the Societies Registration Act, 1860 and the Governing Body constituted under Rule 23 of the Rules of the Institute is the Supreme Authority which may exercise all powers defined in the said Rules and Byelaws. The Institute was created under the administrative control of Department of Science and Technology (DST), Ministry of Science and Technology and is presently under the administrative control of DBT, as its first autonomous Body. Funds of the Society consist of lumpsum and recurring grant from Government of India besides other contributions from outside. The Service Rules and Regulations of the Government of India, Department of Personnel & Training (hereinafter referred to as 'DoPT') are followed by NII, to the extent they are not at variance with the Rules of the Institute.
- b. The Petitioner was appointed with NII as Staff Scientist-IV on 08.11.1999 and subsequently promoted. He remained on deputation in CSIR-IGIB from 24.03.2009 till 23.11.2016. After his repatriation on 24.11.2016, NII received an e-mail communication on 28.11.2016 from Respondent No. 1/DBT that the Petitioner was being considered for the post of Director, NII and sought Vigilance Clearance from NII. NII vide letter dated 02.12.2016 sought Vigilance Clearance from CSIR-IGIB for the period of his deputation there. CSIR vide letter dated 13.12.2016 communicated that no Vigilance or disciplinary case

was pending, however, CVO CSIR had informed that the case of engagement of the Petitioner with Vyome was under investigation.

- c. A self-contained letter dated 20.12.2016 was sent by NII to Respondent No. 1 enclosing the letter of the CSIR. Vide another letter dated 20.12.2016, NII also informed Respondent No. 1 that it was not aware of the engagement of the Petitioner with Vyome. NII thereafter vide OMs dated 22.12.2016 and 03.01.2017 sought information from the Petitioner regarding the said involvement. Petitioner submitted his reply thereto and not being satisfied with the replies, a Charge Memo was issued under Rule 16 of CCS (CCA) Rules, 1965. Response was submitted to the Charge Memo by the Petitioner. The issue was examined by Respondent No. 1 and based on their assessment, DBT was of the view that there were financial irregularities. This was taken as violation of Conduct Rules and the CVO NII recommended dropping of the charge memo under Rule 16 and issuance of Charge Sheet under Rule 14 of the CCS (CCA) Rules for violating Rules 15, 16 and 18 of CCS (Conduct) Rules, 1964.
- d. A Fact Finding Committee was constituted by the Governing Body NII on 04.12.2017, to examine the Report of the earlier High Level Fact Finding Committee and the response given by the Petitioner to the said Committee, regarding the Petitioner's involvement in acquiring Debentures and shares as well as investments etc. without the permission of the Government. The

matter was thereafter placed before the Competent Authority after the advice of the DG, CSIR, who endorsed the view of the CVO CSIR that there was a breach of Vigilance Rules. After the approval from the Competent Authority, major penalty chargesheet was issued on 14.03.2019.

- e. In the meantime, a communication dated 07.06.2019 was received from the CVC through Respondent No. 1, seeking reply as to why First Stage Advice of the CVC was not taken before issuance of chargesheet. NII explained the reasons for not doing so and assured that the CVC advice shall be taken before taking a final decision in the inquiry. The Inquiry Officer submitted the Report on 02.12.2019 and the Disciplinary Authority submitted the facts of the case to CVC through the CVO of Respondent No. 1 vide letter dated 12.05.2020, seeking the CVC advice, which is awaited.
- f. The disciplinary proceedings are still pending against the Petitioner as the CVC advice is awaited and final orders are yet to be passed by the Disciplinary Authority. As per CVC Guidelines, Vigilance Clearance is mandatory before considering the request of an employee to give 'No Objection' to deputation etc. Petitioner has already availed 7 years and 8 months of deputation which is beyond the normal tenure of six years and thus even otherwise he cannot be permitted to proceed on deputation, for a second tenure.
- g. It is incorrect for the Petitioner to contend that the Petitioner has been exonerated of the charges by the Disciplinary Authority

vide order on 30.01.2020. The said order is tentative and conditional requiring the Petitioner to take 'corrective measures'. Petitioner has himself in response to the order, provided additional information on 20.02.2020 and 13.03.2020, whereafter a letter was sent to the CVC on 12.05.2020, along with the record, seeking advice. In this view, the order cannot be termed as a final order of exoneration.

- h. NII vide letter dated 29.11.2019, addressed to CVC, had explained the reasons for not seeking First Stage Advice. Institute is an independent and Autonomous Society under the partial administration and control of Respondent No. 1 and is not strictly bound by the CVC Guidelines, however, since the Institute receives substantial portion of funds as Grants-in-Aid from the Central Government, it tries to adhere to its Instructions/Policies. In line with the Government of India Instructions, NII decided that the further course of action shall be taken depending on the CVC advice. The fact that NII did not seek First Stage Advice from CVC, cannot even otherwise benefit the Petitioner in view of the judgement in ***The Chairman, Central Board of Trustees vs. M. Vijayaraj, 185 (2011) DLT 688***. Reliance is placed on the following passage of the judgement:

“10. ... After the preliminary investigation is conducted by the department, the procedure and purpose for approaching CVC for first stage advice is to seek the opinion of the CVC as to whether charge sheet should be issued or not and secondly the nature of charges which

should be mentioned in the charge sheet. That is the only purpose of advice at that stage. It is trite that no prior consent or approval of the CVC is required and even if CVC, in a given case, states that inquiry need not be held, the Disciplinary Authority, for sufficient reasons can ignore the said advice though normally it will go by the advice of the CVC. It is felt that the learned Tribunal has failed to appreciate that while an "approval" denotes an element of compulsory and mandatory, "advice" refers to an action which by nature is not compulsorily implementable. What we are emphasizing here is that CVC is not an authority whose prior approval is required or that is mandatory requirement before issuance of charge sheet. When we look into the matter from this angle, it becomes apparent that if the advice of the CVC was not taken, it was a mere irregularity and not illegality."

5. Arguing in rejoinder, learned counsel for the Petitioner contends as follow:

- a. It is wholly incorrect for NII to contend that the order dated 30.01.2020 is not a final order of the Disciplinary Authority. Perusal of the order would show that it is neither a file noting nor a tentative decision, but a decision formally communicated to the Petitioner as an order of exoneration. Merely asking the Petitioner to furnish additional information and the Petitioner furnishing the same, cannot take away from the order its character of a final order of a Disciplinary Authority. At no point in time, till the Petitioner approached this Court, was he informed that final decision cannot be taken till receipt of clearance from the CVC. Petitioner has been regularly corresponding with NII for forwarding his application for

deputation to THSTI, but it was not even remotely mentioned in any response that CVC advice was awaited or mandatory. On the contrary, in the letter dated 29.11.2019 addressed by NII to CVO, DBT, NII has stated that being an independent and Autonomous Body, provisions of Sections 8(1)(g) and 8(2) of the CVC Act, 2003 are not applicable to the case.

- b. For the first time through the Counter Affidavit, NII has produced a letter dated 12.05.2020 sent by NII to CVO DBT seeking Second Stage Advice from CVC. It is obvious from reading of the letter that NII has deliberately suppressed in the said letter the contents of the order dated 30.01.2020 issued by the Disciplinary Authority.
- c. CVC Guidelines do not envisage a post-exoneration advice from the CVC. The Rules of NII also do not envisage any such procedure. A delayed reference to CVC also establishes beyond doubt the bias against the Petitioner, which has its genesis in the selection process which had been initiated for appointment of Director, NII. No documents/Circulars/DoPT OM's have been produced by NII, whereby it is permissible to seek an advice from the CVC after an order of exoneration passed by the Disciplinary Authority has been conveyed to an employee. In fact NII by its own showing did not take the first stage advice before issuing the Charge Memorandum and is setting up an excuse of second stage advice at a stage where the Disciplinary Authority, after consulting the Secretary DBT and with the

approval of the Competent Authority had even communicated the final order to the Petitioner.

- d. Although with the passage of time, the relief of proceeding on deputation to THSTI has become infructuous, however, the stand of NII that Petitioner cannot have a second tenure on deputation is contrary to the very Rules of deputation relied upon by NII and the DoPT OM dated 17.06.2010. Neither the DoPT Guidelines on deputation read with Clarificatory OM dated 17.02.2016 nor Schedule VI to the NII Group 'I', 'II', 'III' and 'IV' (Administrative, Technical and Scientific) Recruitment Rules, 1996 stipulate that an employee of NII having previously availed of deputation for a period of more than six years is barred for all times for deputation. There is no such embargo except for a mandatory cooling off period of three years, which is over in the case of the Petitioner.

6. I have heard the learned counsels for the parties and examined their rival contentions.

7. Before traversing the present case on its facts, it is necessary to examine the procedure for imposing major penalties under Rules 14 and 15 of the CCS (CCA) Rules, 1965, as there is no controversy that the said Rules govern the parties. The procedure for imposing a major penalty under Rule 11 (v) to (ix) is initiated by drawing up Article(s) of Charge(s) supported by Statement of Imputation of misconduct, which is required to be served on the Government Servant. This is accompanied by a list of documents and list of witnesses by which the charges are proposed to be sustained. On receipt of the Chargesheet, the Government Servant is

required to submit his written Statement of Defence, if so desires, within 15 days, subject to further extension, upto a maximum period of 45 days from the date of receipt of the Article(s) of Charge(s). On receipt of the Statement of Defence, the Disciplinary Authority may itself inquire into the Article(s) of Charge(s) or appoint an Inquiring Authority for the purpose, with respect to the charges not admitted by the Government Servant.

8. After the appointment of the Presenting Officer, the Government Servant is given an opportunity to take the assistance of any other Government Servant as per the procedure specified in the Rules, to present the case on his behalf. This is followed by evidence, oral and documentary, whereafter the Government Servant closes his case in defence. Inquiring Authority, after questioning the Government Servant under Rule 14(18), whenever applicable, provides an opportunity to the parties to file their written briefs. On conclusion of the inquiry proceedings, a Report is rendered by the Inquiring Authority and the same is forwarded to the Disciplinary Authority along with complete Record of the Inquiry. This completes the procedure before the Inquiring Authority under Rule 14.

9. Further procedure for action on the Inquiry Report is prescribed under Rule 15. Copy of the Report, together with 'tentative' reasons for disagreement, if any, by the Disciplinary Authority, is forwarded to the Government Servant for a written representation, in case he so desires to make one. Sub-Rule (3) of Rule 15 prescribes for consultation with the UPSC, wherever necessary. Copy of the advice of the Commission is

then forwarded to the Government Servant, who may submit his response on the same, within 15 days.

10. Sub-Rule (5) of Rule 15 stipulates that if the Disciplinary Authority having regard to its finding on all or any of the Articles of Charge, is of the opinion that any of the penalties specified in Rule 11(i) to (iv) should be imposed, it may make an order imposing such penalty. However, if it is of the opinion that major penalty is required to be imposed under Rule 11(v) to (ix), then it makes an order imposing the penalty under Sub-Rule (6) and at this stage no opportunity is required to be given to the Government Servant, to represent against the penalty proposed.

11. It is beyond the pale of any controversy that disciplinary proceedings conducted under provisions of CCS (CCA) Rules, 1965 are quasi-judicial in nature. The procedure mentioned in Rules 14 and 15, in my view, on a bare reading, do not envisage a stage where the Disciplinary Authority is permitted to pass a tentative order of exoneration, subject to a final order at a later stage. Unlike in Rule 15(2), in Sub-Rules (5) and (6) the word 'tentative' is conspicuously absent to qualify the words 'finding' and 'opinion', thereby indicating the intent of the Legislature that the finding and opinion shall be final. Disciplinary Authority can hold the charged officer 'guilty' or to 'exonerate' him, and once passed, the order is final. Thus, perusal of these provisions cannot lead to a conclusion, that it is open to a Disciplinary Authority to take a tentative decision of exoneration and the order dated 30.01.2020 did not finally exonerate the Petitioner. The word 'tentative' occurs only in Rule 15(2), which is clearly a stage when the Inquiry Officer submits a Report

to the Disciplinary Authority. At that stage, the Disciplinary Authority has the power and prerogative to disagree with the findings of the Inquiry Officer and if it so does, it shall forward a copy of the Report of the Inquiry Officer, together with its tentative reasons for disagreement to the Government Servant, who, if so desires, may submit his written representation to the Disciplinary Authority. Sub-Rule (2) of Rule 15 has been carefully drafted, in my opinion, to qualify the words 'reasons for disagreement' with the word 'tentative' and the reason for incorporating the provision is obvious. If the Inquiry Officer renders a finding in favour of the delinquent officer, holding the charges as 'not proved' and the Disciplinary Authority disagrees with the said findings, Government Servant has to be given an opportunity to represent. Based on the stand taken in the representation the Disciplinary Authority takes a final decision and thus at the first stage, the disagreement cannot be final and conclusive.

12. That the order dated 30.01.2020 was a final decision of the Disciplinary Authority, is also fortified by a bare reading of the order itself, which is as follows:

"No.Admn./PF-673/RSG/99(Vig.)/NII/4544
30.01.2020

Reference Memorandum No.Admn/PF-673/RSG/99-Vig./NII/4587 dated 14.03.2019, issued to Dr. Rajesh S. Gokhale, Staff-Scientist-VII, NII, under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. To enquire into the charges framed against Dr. Gokhale, the undersigned as Disciplinary Authority had appointed an Inquiry Officer.

The Inquiry Officer has submitted the Inquiry Report to the undersigned. After considering the Report, Dr. Rajesh S. Gokhale is informed that he is exonerated of all the alleged charges, subject to compliance of the following requirements as corrective measures :

- i. Provide detailed specific information about his current involvement in M/s. Vyome Biosciences and its subsidiaries.*
- ii. His equity shares and Consultancy money from the company which has not been capitalized yet should be processed as per NII Consultancy rules and as per Govt. of India Tax guidelines.*

He is further advised to comply with all the procedural requirements in the future.

The information with regard to compliance of the above corrective measures should reach the undersigned within one month from the issue of this communication.”

13. The order clearly records that after considering the report of the Inquiry Officer, the Petitioner is ‘exonerated’ of all the alleged charges. Although no doubt that in the order itself the Disciplinary Authority has sought some information from the Petitioner, as detailed therein, but this in my view cannot dilute or take away from the order the clear decision of the Disciplinary Authority to exonerate him. The Rules of procedure do not prescribe or envisage making the decision of exoneration subject to any caveat and once taken the decision is final insofar as the Disciplinary Authority is concerned. At best the latter part of the order can be construed as directions requiring the Petitioner to furnish information or take certain actions, as abundant caution, however, there is no indication that the intent was anything but to exonerate the Petitioner.

14. The matter can be looked at through another angle. After the Disciplinary Authority received the report from the Inquiry Officer, finding that the Articles of charges were held to be ‘not proved’, it was within the power and prerogative of the Disciplinary Authority to disagree with the findings and send the Disagreement Memo along with the Report of the Inquiry Officer to the Petitioner, for his representation. Clearly and admittedly, the Disciplinary Authority did not follow this course of action under Rule 15(2), and instead issued an order, carefully and consciously, using the word ‘exonerated’, after examining the Inquiry Report.

15. Counsel for the Petitioner is also right in her contention that the Disciplinary Authority performs quasi-judicial functions and once it issues an order, which is published or notified and communicated to the employee, formally, the order goes out of the control of the Disciplinary Authority and cannot thereafter be recalled, changed or modified by the Disciplinary Authority. Therefore once the Authority exercising quasi-judicial power, takes a final decision, it becomes ‘functus officio’ and cannot review its decision, unless the Statute permits otherwise. The question as to when and at what stage the Authority becomes ‘functus officio’ was dealt with by the Supreme Court in **SBI vs. S.N. Goyal** (*supra*). The Court held as follows:

“Re: Questions (iii) — When did the appointing authority become functus officio

24. Ext. P-24 is the note dated 18-1-1995 by which the disciplinary authority accepted the finding of guilt recorded/arrived at by the enquiry officer in regard to the

charge against the respondent that he temporarily misappropriated the funds of the customers of the Bank. The disciplinary authority though of the view that the respondent deserved a severe punishment, felt that having regard to the length of his service, he should be shown leniency, and therefore, recommended imposition of a lesser punishment of reduction of pay by four stages in the timescale. The appointing authority made a note on the same day (18-1-1995) agreeing with the said recommendation. But the said order was not communicated to the respondent. On the other hand, the disciplinary authority on reconsideration of the matter put up a fresh note dated 2-5-1995 recommending the penalty of removal and that was accepted by the appointing authority on 3-5-1995 and communicated to the respondent on 30-6-1995.

25. The learned counsel for the respondent contended that the appointing authority became functus officio once it passed the order dated 18-1-1995 agreeing with the penalty proposed by the disciplinary authority and cannot thereafter revise/review/modify the said order. Reliance was placed on the English decision V.G.M. Holdings Ltd., Re [(1941) 3 All ER 417] wherein it was held that once a Judge has made an order which has been passed and entered, he becomes functus officio and cannot thereafter vary the terms of his order and only a higher court, tribunal can vary it. What is significant is that decision does not say that the Judge becomes functus officio when he passes the order, but only when the order passed is “entered”. The term “entering judgment” in English law refers to the procedure in civil courts in which a judgment is formally recorded by the court after it has been given.

26. It is true that once an authority exercising quasi-judicial power takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. But the question is as to at what stage an authority becomes functus officio in regard to an order made by him. P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Edn., Vol. 2, pp. 1946-47)

gives the following illustrative definition of the term “functus officio”:

“Thus a judge, when he has decided a question brought before him, is functus officio, and cannot review his own decision.”

27. Black's Law Dictionary (6th Edn., p. 673) gives its meaning as follows:

“Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore of no further force or authority.”

28. We may first refer to the position with reference to civil courts. Order 20 of the Code of Civil Procedure deals with judgment and decree. Rule 1 explains when a judgment is pronounced. Sub-rule (1) provides that the court, after the case has been heard, shall pronounce judgment in an open court either at once, or as soon thereafter as may be practicable, and when the judgment is to be pronounced on some future day, the court shall fix a day for that purpose of which due notice shall be given to the parties or their pleaders. Sub-rule (3) provides that the judgment may be pronounced by dictation in an open court to a shorthand writer [if the Judge is specially empowered (sic by the High Court) in this behalf]. The proviso thereto provides that where the judgment is pronounced by dictation in open court, the transcript of the judgment so pronounced shall, after making such corrections as may be necessary, be signed by the Judge, bear the date on which it was pronounced and form a part of the record. Rule 3 provides that the judgment shall be dated and signed by the Judge in open court at the time of pronouncing it and when once signed, shall not afterwards be altered or added to save as provided by Section 152 or on review. Thus, where a judgment is reserved, mere dictation does not amount to pronouncement, but where the judgment is dictated in open court, that itself amounts to pronouncement. But even after such pronouncement by open court dictation, the Judge can make corrections before signing

and dating the judgment. Therefore, a Judge becomes functus officio when he pronounces, signs and dates the judgment (subject to Section 152 and power of review). The position is different with reference to quasi-judicial authorities. While some quasi-judicial tribunals fix a day for pronouncement and pronounce their orders on the day fixed, many quasi-judicial authorities do not pronounce their orders. Some publish or notify their orders. Some prepare and sign the orders and communicate the same to the party concerned. A quasi-judicial authority will become functus officio only when its order is pronounced, or published/notified or communicated (put in the course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or communicated, the authority will become functus officio. The order dated 18-1-1995 made on an office note, was neither pronounced, nor published/notified nor communicated. Therefore, it cannot be said that the appointing authority became functus officio when it signed the note dated 18-1-1995.

29. Let us next consider whether the decision taken on 18-1-1995 was a final decision. A careful examination shows that the order dated 18-1-1995 was intended only to be tentative and not final. Firstly, the said decision was not communicated to the respondent, nor was any letter or order issued to the respondent imposing the penalty mentioned in the order dated 18-1-1995. Secondly, the appointing authority by letter dated 2-2-1995 (Ext. P-23) informed the Chief Vigilance Officer of the Bank about the enquiry against the respondent, his decision accepting the findings of the enquiry officer, and the proposal to show leniency by imposing only a punishment of reduction of pay by four stages. The Chief Vigilance Officer sent a reply dated 7-2-1995 (Ext. D-2) wherein he observed that "by pocketing the money of the customers Shri Goyal has exposed the Bank's faith reposed in him" and there was no ground for showing leniency. He also expressed the view that the

respondent deserved a more severe punishment and requested the appointing authority to re-examine whether the respondent should be continued in the post. Thereafter the disciplinary authority reconsidered the entire issue again and put up another note dated 23-3-1995/2-5-1995 to the appointing authority proposing the punishment of removal from service. After considering the said recommendation, the appointing authority passed the following order on the said note on 3-5-1995:

“On a dispassionate and objective evaluation of the facts, circumstances of the case, inquiry proceedings and evidence available, I concur with the recommendations of the disciplinary authority mentioned at Serial No. 4 of the note and have come to the conclusion that the penalty of ‘removal from Bank’s service’ proposed to be inflicted on Shri S.N. Goyal, Officer JMGS I, is just and appropriate and I, therefore, order imposition of this penalty on the official.”

30. *It is thus clear that on 18-1-1995, the appointing authority had only tentatively approved the proposal of the disciplinary authority that a lenient view be taken by imposing a penalty of reducing the pay by four stages in the timescale; and that on 3-5-1995, a final decision was taken in regard to the penalty and that final order was communicated to the respondent as per letter dated 30-6-1995. Therefore, the contention that the appointing authority had earlier passed a final order on 18-1-1995 and had become functus officio and therefore, it could not change the said order dated 18-1-1995 is liable to be rejected.”*

16. In the case of ***State of Punjab vs. Khemi Ram (supra)*** the Court was dealing with a question as to whether communication of the order means actual receipt by the concerned Government Servant and answered the question by observing that once an order is sent out, it goes out of the control of such an Authority and therefore there would be no chance

whatsoever of its changing its mind or modifying it. Once the order is issued and sent out to the Government Servant, it must be held to have been communicated to him no matter when he receives it. Relevant passage is as follows:

“17. The question then is whether communicating the order means its actual receipt by the concerned government servant. The order of suspension in question was published in the Gazette though that was after the date when the respondent was to retire. But the point is whether it was communicated to him before that date. The ordinary meaning of the word “communicate” is to impart, confer or transmit information. (Cf. Shorter Oxford English Dictionary, Vol. 1, p. 352). As already stated, telegrams, dated July 31, and August 2, 1958, were despatched to the respondent at the address given by him where communications by Government should be despatched. Both the telegrams transmitted or imparted information to the respondent that he was suspended from service with effect from August 2, 1958. It may be that he actually received them in or about the middle of August 1958, after the date of his retirement. But how can it be said that the information about his having been suspended was not imparted or transmitted to him on July 31 and August 2, 1958 i.e. before August 4, 1958, when he would have retired? It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned government servant, it must be held to have been communicated to him, no matter when he

actually received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective. If that be the true meaning of communication, it would be possible for a government servant to effectively thwart an order by avoiding receipt of it by one method or the other till after the date of his retirement even though such an order is passed and despatched to him before such date. An officer against whom action is sought to be taken, thus, may go away from the address given by him for service of such orders or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. Such a meaning of the word "communication" ought not to be given unless the provision in question expressly so provides. Actual knowledge by him of an order where it is one of dismissal, may, perhaps, become necessary because of the consequences which the decision in The State of Punjab v. Amar Singh contemplates. But such consequences would not occur in the case of an officer who has proceeded on leave and against whom an order of suspension is passed because in his case there is no question of his doing any act or passing any order and such act or order being challenged as invalid."

17. I also find force in the contention of the Petitioner that the order dated 30.01.2020 is neither a file noting nor a tentative decision, but a decision formally communicated by a Disciplinary Authority to the Petitioner, intimating him of his exoneration in the Disciplinary proceedings. Petitioner is also right in stating that on 13.03.2020 when the Disciplinary Authority issued another communication directing him to furnish documents in support of his reply dated 20.02.2020, in compliance of the information sought in the order dated 30.01.2020, it was nowhere mentioned that the previous communication was a tentative proposal and not a final decision. NII has not disputed the specific stand

of the Petitioner that at no point in time since 30.01.2020 till the present petition was filed by the Petitioner, the Petitioner was informed that a final decision cannot be taken till the clearance is received from the CVC, despite exchange of correspondence between the parties, on other issues.

18. It is crucial at this stage to deal with the contention of NII that the order dated 30.01.2020 was tentative and in the nature of a proposal, as the order itself required the Petitioner to take some corrective measures. The corrective measures as evident from a reading of the order extracted above were; (a) provide detailed specific information about the Petitioner's current involvement in Vyome and its subsidiaries, and (b) the equity shares and consultancy money from Vyome, which had not been capitalized yet, should be processed as per NII Consultancy Rules and as per Government of India Tax Guidelines. It was further directed that the information with regard to compliance of the measures should reach the Disciplinary Authority within one month from the issue of the communication. Petitioner filed a detailed response to the communication and furnished the requisite information vide letter dated 20.02.2020. It was pointed out to the Disciplinary Authority that Petitioner had co-founded the Scientific Enterprise Vyome, after obtaining all requisite approvals from the Competent Authority and was permitted to be a Non-Executive Director in the Company. Approval was also granted to render consulting services to Vyome as well as hold equity in the Enterprise. The Consultancy assignment was terminated when petitioner returned back to NII and with effect from 31.08.2017, Petitioner resigned from the Board of Vyome and was currently only a shareholder and had no other involvement. Subsequently, with effect from 14.12.2018, Vyome has

been restructured and its R&D business has been transferred to a subsidiary and all the prevailing shareholders including the Petitioner were allotted shares in proportion to the old shareholding pattern. Petitioner had declared his shareholdings in the requisite proforma to Director NII under Rule 18(4) of the CCS (Conduct) Rules on 08.03.2019. Insofar as the second 'measure' was concerned, Petitioner brought out that the consultancy fees from Vyome was directly paid to CSIR-IGIB and to this effect there is a finding rendered by the first Fact Finding Committee, in favour of the Petitioner. This fee has not been distributed and hence no amount was received by the Petitioner. As far as the tax regime was concerned, Petitioner stated that Vyome had allotted him 18,500 shares and he had paid Rs. 1,85,000/- from his personal funds for its subscription. He had not sold or transferred any shares for any consideration and has received no dividends from Vyome. There is no monetization of the above shares, hence there is no capital gain or wealth tax incident and the entire transaction is compliant with the prevailing tax norms. A detailed response was also furnished with respect to the compliance under the Income Tax Act.

19. Vide letter dated 13.03.2020 further information was sought from the Petitioner which he duly furnished by his letter dated 13.03.2020. Thereafter, there was no response from the Disciplinary Authority and the Petitioner rightly presumed that the response has been taken on record and filed. Counsel for NII has over emphasized the direction of the Director NII to take corrective measures and the contention deserves to be rejected.

20. It is relevant at this stage to note Article I of the Charge Memo which is as under:

“Article of Charge I

That Dr. Rajesh S. Gokhale, Staff Scientist-VII in National Institute of Immunology while on deputation as Director of Institute of Genomics and Integrative Biology (IGIB), a CSIR Institute under Department of Scientific and Industrial Research (DSIR), a Government of India is found to have engaged directly in business activities and is found to be the founding Director (with Director Identification number 03121276) of M/s. Vyome Biosciences Private Limited, a private limited company with Company Identification Number (CIN) U33110DL2010 PTC 207299, registered under Companies Act 1956 on 19.08.2010 i.e. for commercial purposes, without previous sanction of the same from National Institute of Immunology.

He is thus found to have violated Rule 3.1 (i, ii, iii) and Rule 15(1)(a, b, e) and 15(4) of CCS (Conduct) Rules, 1964 and has thus failed to maintain absolute integrity devotion to duty and acted in a manner which is unbecoming of an employee of the Institute.”

21. The Inquiry Officer after examining the evidence and the documents tendered from both sides came to a finding that the charge was not proved. This charge has a bearing on the corrective measures mentioned in the order of the Disciplinary Authority and the finding of the Inquiry Officer is significant and is as follows:

“Findings of Inquiry Officer on Charge 1:

The attention of the Disciplinary Authority is invited towards contents of policy decision contained in OM (File No.

3/3/2009-TU/V/Knowledge-to-equity) dated 25.05.2009 issued by the Department of Science and Technology (DSIR), GOI regarding a scheme for “Encouraging Development and Commercialization of Inventions and Innovations: A new impetus” (Annexure-22) and to the CSIR Office memorandum (No. 34/ENT/2009-PPD) dated 30.11.2009 (Annexure-23) regarding implementation of the said scheme in CSIR, which permitted scientific researchers to hold equity stake in scientific enterprises/spin offs while in professional employment with their research and academic institutions and also provided exemption from the application of Rule 15, 16, 18 of the CCS (Conduct) Rules, and FR-11 as well as other related rules to the Scientists who were permitted by the DG, CSIR to hold equity stake in the startup Company. Incidentally, Department of Biotechnology also had a similar scheme circulated vide their OM No. BT/NBDB/13/01/2014 dated 25.11.2014 (Annexure-24). The charged officer had applied to the DG CSIR, Secretary DSIR, GOI/his Disciplinary Authority in CSIR, requesting permission to start a Scientific enterprise under the aforementioned scheme of the GOI & to join the proposed enterprise as a ‘Non-executive Director’. He also requested for permission to hold the Founder-stocks in the proposed enterprise. He was granted in principal approval/ permission for the same on 02.06.2010 (Annexure-12). Soon thereafter the said startup scientific enterprise i.e. M/S Vyome Biosciences Pvt. Ltd. was established. Although no specific permission was given but all other related approvals were given. He was also granted permission/approval to render consulting services to M/S Vyome Biosciences and before entering into a Consulting agreement with the company, the same was duly vetted and approved by CSIR. During his deputation in CSIR-IGIB, on 27.10.2010 on approval was granted to him by DG, CSIR, the competent Authority/ disciplinary Authority to sign the aforementioned consulting agreement in his individual capacity. The amended consulting agreement dated 30.07.2015 was also drawn up with the approval of DG, CSIR.

He has not received any monies or amount from the company towards the fixed component or the variable component of consulting fees as the same was directly paid to CSIR-IGIB as per terms of the agreement. This money is still supposed to be with CSIR-IGIB. A major evidence in this case is the “DSIR Twelfth Five Year Plan – Plan Document Summary including Eleventh Plan Achievements 2012-2017 Volume-I” document wherein the case of M/S Vyome Biosciences Pvt. Ltd. has been mentioned as an achievement (Annexure-11) Going through its content it is amply clear knowledge of almost everyone in CSIR and there was absolutely no objection from there side about association of Dr. Rajesh S Gokhale with M/S Vyome Biosciences Pvt. Ltd.

Application in desired format for his Faculty Promotion in NII attached with an email written by Charged Officer to Director NII on 28.02.2013 (Annexure-21) has clear mention of his founded M/S Vyome Biosciences and his being the founder Director. Moreover, several Scientists from DBT and NII were members of Research Council of CSIR-IGIB, hence formation of M/S Vyome Biosciences and Dr Gokhale being its Founder Director was in the knowledge of NII scientists and administration right from beginning and no objection was ever raised. His tenure/lien extension application were always approved and Vigilance Clearance granted, which clearly means that nothing was found against him in spite of clear knowledge of his activities related to M/S Vyome Biosciences.

It is a matter of record that his ‘No Vigilance Clearance’ has been sent by NII on July 11, 2013 which is after the information of his association with M/S Vyome Biosciences became known to NII officials as per his report dated 28.02.2013 (Annexure-21) referred above and also that on the basis of interaction that followed after submission of same report (Annexure-21) Dr Gokhale was promoted also. Hence the charge no. 1 is not proved.”

22. In this context, I may also usefully extract herein the conclusion of the Inquiry Officer as under:

“Conclusion:

As mentioned in the foregoing paras none of the charges could be substantiated or proved against Dr Rajesh S Gokhale.

When the government has a scheme of “Encouraging Development and Commercialization of Inventions and Innovations”. Questioning such activities may in fact be counterproductive to the entire scheme of Scientific Entrepreneurship.

As per the records of this case perused by me the issues have been earlier investigated by two Fact Finding Committees also and both of which have also not found anything against the Charged Officer. My findings also corroborate this.

All 27 Annexures form part of this report.”

23. The Inquiry Officer therefore clearly found no misdemeanor on the part of the Petitioner. The said report has been accepted by the Disciplinary Authority, since no disagreement memo was ever conveyed to the Petitioner, along with the Inquiry Report for his representation.

24. Additionally, to substantiate the innocence of the Petitioner, Counsel for the Petitioner has rightly placed reliance on the two reports of the Fact Finding Committees (FFCs). The first FFC comprising of HOD Pharmacology, AIIMS, Former HOD Dermatology, RML Hospital and Technical Advisor, DG, CSIR, after evaluating all material facts made recommendations ruling out any conflicting interest between the Petitioner’s engagement with Vyome and discharge of his duties as Director IGIB. The recommendations were duly approved by DG, CSIR.

Relevant portion of the Minutes of the meeting dated 07.09.2016 is as under:

“a. Scientific conflict of interest

1. The Committee observed that the scientific consultancy proved by Dr. Gokhale to Vyome is suitably compensated to CSIR-IGIB as per CSIR guidelines and the lab earned Rs.9,84,273 till date (2011-2015). The money is yet not distributed as per the provisions exist in CSIR. Dr. Gokhale has not received any money so far.

xxx

xxx

xxx

b. Administrative Conflict of interest :

xxx

xxx

xxx

3. The money accrued by CSIR –IGIB with respect to scientific consultancy and use of SEM/TEM facilities by Vyome was credited in the laboratory's account. It was also observed that no special preference is given to Vyome in making available equipment.

c. Intellectual conflict of Interest :

1. The intellectual inputs provided by Dr. Gokhale to Vyome do not overlap with the intellectual inputs that he would be providing to the skin biology group at CSIR-IGIB. This can be ascertained by the research outputs which are different in both the groups. The company has three different proprietary platform technologies in NCEs, API modification and formulation development to improve the efficacy of existing ingredients in personal care and pharmaceutical category. None of such work / platform development is pursued by CSIR-IBIG in its skin biology program or in the NMITLI project.

d. Conflict of interest w.r.t. use of facilities

1. The Committee observed that Vyom Biosciences private ltd. Has used CSIR-IGIB's SEM/TEM facilities for its work.

However as declared by Dr. Gokhale, the company has pursued IGIB's BDMG directly for the same and the facilities were provided to the company on pay per use basis as per the institutional rules for private industries. There were neither discounted charges for the use of facilities nor any preferential treatment was given to the company for the use of facilities thereby ensuring that laboratory research was not hampered. Till date for using the facility, the company has paid Rs.7,48,699 to CSIR-IBIG.

The Committee's observations and recommendations:

xxx

xxx

xxx

CSIR is the pioneer in developing the scientific entrepreneurship scheme that enabled scientists to set up knowledge enterprise while in service. The scheme of CSIR has been adopted by many research and academic institutions in India. Government of India is also giving a big boost to start ups in India for economic development as well as to create jobs. The close interaction with industries and / or startup benefits the scientists and thereby the institute, in reshaping their R&D activities towards applications as opposed to advancement of science. This must be encouraged in the larger interest of the nation. The Committee felt that under the leadership of Dr. Gokhale, the institute entered into Skin Biology area and a good number of scientists working in the area. The startup Vyome Biosciences which Dr. Gokhale founded much before the implementation of the NMITLI project has also a bigger canvas in skin biology domain. Therefore, a general perception may arise of some conflict of interest. However, going into the details of the type of projects specific areas of research, there seems to be no commonality and overlap. The Committee thus does not see any conflict of interest in the present case. The software developed under NMITLI project looks at transcriptional level for analyzing the experimental data and gives the predictions while the company is developing the dermatology (skin and hair care) products.

Finally, the Committee was of the opinion that it is natural and logical for a scientist to work in an area in which he / she has expertise in terms of intellectual knowledge. For this the scientist will and should interact / collaborate with the institutes / industries in his expertise domain. Therefore, use of expertise / intellectual knowledge should not be considered or construed as conflict of interest.

After further discussion, the committee clearly ruled out any conflict of interest in the present case and the proceedings of the meeting may be construed as Report of the committee, as it covered all the aspects.”

25. In this context I may also quote the relevant part of the report of the second FFC (hereinafter referred to as ‘FFC2’), which comprised of Professors from the different IITs, which are the conclusions drawn by the Committee and the same are as under:

“It is quite apparent that Dr Gokhale did not intend to hide the matter from NII intentionally or from any other agency because of the fact: (a) The Director of NII, in his capacity of Chairman, RC of CSIR-IGIB was aware of co-founding of M/s Vyome Biosciences by Dr RS Gokhale, (b) The prevailing policy of Government of India (vide DSIR OM Np. 3/3/2009-TU/V/Knowledge-to-equity dt 25th May 2009) did allow a scientist to float a company for profit with exemption from CCA rules 15, 16 and 18, (c) Dr Gokhale co-founded M/s Vyome Biosciences after duly following the procedure prevailing at that time at CSIR, which was his employer during the lien period from NII, and (d) Prior to joining IGIB on lien under FST terms, Dr Gokhale had written to CSIR about the terms and conditions of his contract for lien from NII for which CSIR did send a clarification to Director NII (dated 16.03.2009) to explain the conditions under which Dr Gokhale would discharge his duty during the lien period covering matters related research, generation of intellectual property, etc. In fact, Dr Gokhale maintained during his disposition to FFC2

that he had thought that no further communication was required from his end as NII had not objected to this letter of CSIR dated 16.03.09.”

“The FFC2 concludes that the opinion expressed by CVO of DBT in this matter was premature and more of presumption due to lack of understanding of the procedures and meaning of CCD rather than a fact supported by evidence. Consequently, the charges levelled by NII with regard to financial irregularity or violation of financial norms by Dr Gokhale is unfounded and in error as (a) no debenture or equity was actually monetized (the valuation is only a projection), (d) Dr Gokhale acquired the equity with permission from CSIR using his personal resources (of about Rs 1.75 lakhs), (c) Dr Gokhale deposited the consultancy fee received from M/S Vyome Biosciences to IGIB, requested CSIR several times to frame a policy for its utilization, and has not since used or accessed that amount. Hence there is no evidence that CSIR or NII incurred any financial loss due to founding of M/S Vyome Biosciences and Dr Gokhale gained any financial benefit of the kind alleged.”

“Thus FFC2 notes that Dr Gokhale has diligently followed the CSIR norms informed to him at the time of joining about filing patent, opening a company and sharing information about his publication and patent filing with NII and has not withheld or concealed any information about intellectual output from CSIR or NII for his personal gain or any ulterior motive.”

“Thus, FFC2 infers that Dr Gokhale did not modify any rule or procedure for evaluation of patentability in CSIR-IGIB so as to offer any undue or unethical advantage to M/S Vyome Biosciences.”

“By taking into all the documents scrutinized by HLFCC and the clarifications and additional information provided by Dr Gokhale in his written reply, FFC2 upholds the conclusions of the Conflicts of Interest Committee chaired by Dr YK Gupta

that had exonerated Dr Gokhale of any wrong-doing or conflict of interest.”

“Finally, the FFC2 concludes from its report that the whole facts of the case do not indicate, let alone prove, that Dr Rajesh S Gokhale (i) violated any extant CSIR norms amounting to compromising with the intellectual or financial interest of CSIR, which may be counted as conflict of interest in favour of M/s. Vyome Biosciences, and (ii) showed any intention to wilfully conceal facts or intentionally violate any CSIR or NII rules for deriving undue financial or professional benefit to himself depriving CSIR or NII.”

26. What thus emerges is that all investigations/inquiries against the Petitioner repeatedly and consistently held in his favour and came to a conclusion that the charges levelled could not be substantiated or proved. It is thus not open to NII to interpret and infer the innocuous directions in the order dated 30.01.2020 to take corrective measures as anything more than furnishing information for the sake of record.

27. Counsel for NII had laid great emphasis on the letter dated 12.05.2020 and argued that it was clearly mentioned in the said letter, while responding to the Director and CVO of Respondent No. 1 that the Disciplinary Authority relying on the findings of the Inquiry Report and keeping in view the additional information furnished by the Petitioner proposes to exonerate the Petitioner of all charges. However, as per directions of the CVC, vide OM dated 07.06.2019 and the NII's assurance vide letter dated 29.11.2019, further course of action was to be decided, after the advice was received from CVC. The argument is that no final order of exoneration was passed by the Disciplinary Authority

and it was a mere proposal awaiting the CVC advice and the contents of the said letter would so reflect.

28. Counsel for the Petitioner had urged that the said letter dated 12.05.2020 sent by CVO, NII to CVO, DBT was for the first time produced along with the Counter Affidavit and in the said letter, NII has though referred to the order dated 30.01.2020, but the same has been mentioned in a passing reference without deliberately disclosing that it was an order exonerating the Petitioner. There is no serious rebuttal to the said allegation by NII. Having perused the letter dated 12.05.2020, I find force in the contention of the Petitioner. The letter clearly reflects that while detailing the chronology of events to the CVO, DBT, the CVO, NII referred to the document dated 30.01.2020 as a simple communication seeking information from the Petitioner along with relevant documents, for examination. Para 8 of the letter is as follows:

“8. Pursuant to the above, the DA directed Dr. Rajesh Gokhale vide his communications dated 30.01.2020 and 13.03.2020 to furnish the following information alongwith all the relevant documents for examination:

- i. To provide detailed specific information about his current involvement in M/s Vyome Biosciences and its subsidiaries.*
- ii. His equity share and Consultancy money from the Company which has not been capitalized yet should be processed as per NII Consultancy Rules and as per Govt. of India Tax Guidelines.*
- iii. He was further advised to comply with all the procedural requirements in the future.”*

29. Having given an impression that the matter rested at the stage of information being sought from the Petitioner after the receipt of the

Inquiry Report, it was further categorically stated in para 10 that the Disciplinary Authority proposed to exonerate the Petitioner and this was followed by para 11 where it was stated that further course of action shall be as per the advice of the CVC. Paras 10 and 11 are as under:

“10. Relying on the findings of the Inquiry Report submitted by the IO, and keeping in view the additional information furnished by Dr. Rajesh S. Gokhale, the Disciplinary Authority of the Institute proposes to exonerate Dr. Rajesh S. Gokhale of all the alleged charges.

11. However, as per the directions of Central Vigilance Commission (CVC) vide its OM dated 07.06.2019, received through DBT and the Institute's assurance vide letter dated 29.11.2019 that any further course of action in the matter shall only be taken with due advice of the Commission, advice of CVC may be sought in the matter (copy enclosed as Annexure-VIII/22 pages).”

30. In fact a reference to para 7 of the said letter would also be relevant as a pointer to the fact that the impression given to the CVO, DBT, was that the Disciplinary Authority was ‘proposing’ to exonerate the Petitioner. Para 7 is as follows:

“7. The DA examined the Inquiry Report. Relying on the findings of the IO as brought out in the Report, DA made the following observations on the Inquiry Report and submitted a proposal to Chair GB, NII and Secretary DBT that Dr. Gokhale can be exonerated of all the alleged charges subject to the following corrective measures, in the overall interests of encouraging scientific entrepreneurship activities in the country:

- i. Dr. Rajesh S. Gokhale should be asked to provide detailed specific information about his current*

- involvement in M/s Vyome Biosciences and its subsidiaries.*
- ii. His equity share and Consultancy money from the Company which has not been capitalized yet should be processed as per NII Consultancy Rules and as per Govt. of India Tax guidelines.*
- iii. He should further be advised to comply with all the procedural requirements in the future.*

31. There is thus force in the contention of the Petitioner that while order dated 30.01.2020 reflects a clear exoneration by the Disciplinary Authority, the letter dated 12.05.2020 in so many words conveys that the matter was resting at the stage of proposal. There is no gainsaying that had NII disclosed the correct fact of exoneration of the Petitioner, the Petitioner would have received the Vigilance Clearance and his case for deputation as Dean with THSTI could be processed.

32. Having gone through the order dated 30.01.2020, reports of the Fact Finding Committees and the Inquiry Officer as well as keeping in background the provisions of Rules 14 and 15 of the CCS (CCA) Rules, 1965, I am of the view that the order dated 30.01.2020 can only be treated as an order by a Disciplinary Authority, exonerating the Petitioner from the charges levelled against him and it cannot be held that the proceedings are pending against the Petitioner.

33. Much has been argued by the Counsel for NII that the Second Stage CVC advice is awaited and no declaration can be given that the disciplinary proceedings have concluded. In this context, the first issue that arises is, at what stage CVC advice is sought, during the Disciplinary Proceedings under the CCS (CCA) Rules and the ancillary question would be if the Second Stage CVC advice can be sought or given, post an

order of exoneration by a Disciplinary Authority, accepting the report of the Inquiry Officer, holding the charges 'not proved'.

34. Before examining this issue, it is important to understand the stand of NII with respect to the CVC advice. In the counter affidavit filed to the writ petition, it is stated that NII received a communication dated 07.06.2019 from CVC through DBT seeking reply as to why first stage advice was not taken before issue of the chargesheet. NII while explaining the reasons for not taking the first stage advice stated that advice would be taken from CVC before taking a final decision in the Departmental inquiry. The response sent by NII was through a letter dated 29.11.2019 and needs to be noted. NII informed the DBT that the CVO of NII was never informed by CVO, CSIR that the first stage advice of CVC was mandatory before issuance of the chargesheet. It was only when the DBT sent a communication dated 07.06.2019 that NII learnt of the involvement of the CVC in the matter. Since Charge Memorandum has been issued to the Petitioner and the Inquiry Report has been submitted, further course of action would be after due advice of the Commission. What is however significant is the stand of NII in paras 2, 3 and 6 of the letter. Reading of the said paras shows that NII was clear that being an independent Society and autonomous Body, it was only under the partial administrative control of DBT. In the light of this, Sections 8(1)(g) and 8(2) of the CVC Act, 2003 were inapplicable. It was also brought out in the letter that the said stand had been taken earlier, in an Affidavit, in the High Court, in another writ petition being W.P.(C) 3058/2017.

35. Even in the written submissions filed in this Court, NII has emphasized on the response given in the said letter. It thus appears that NII was of the view that the CVC Act, 2003 as well as the CVC Guidelines/Circulars were not applicable to the disciplinary proceedings conducted by NII qua its employees. Only because the CVC had sought a reply from NII through DBT as to why the first stage advice was not taken, it seems that NII is now taking a stand that it is awaiting the second stage CVC advice, as it has committed to the CVC and DBT to do so. Neither of the parties has been able to shed any light on the applicability of the CVC Guidelines to NII. However, assuming that NII was required to take the CVC Advice, the larger question that arises is if the second stage CVC advice can be sought or given at a stage when the Disciplinary Authority has already passed an order exonerating the Petitioner and the disciplinary proceedings have come to an end, in law.

36. To answer this question, it needs to be examined as to at what stage the CVC advice is sought/given, with respect to disciplinary proceedings. In this context, I may refer to the CVC Manual, 2017. Clause 1.6 deals with the advisory functions of the CVC and Clause 1.6.1(b) stipulates that the Commission tenders its advice to the Competent Authority for initiating the departmental proceedings and before taking a final decision in the vigilance case against the specified category of Public Servants. Clause 1.6.1(b) is as follows:

***“1.6 Advisory Functions of Commission – A Summary
1.6.1 Matters where the Commission tenders its advice to the
competent authority in the following cases –***

xxx

xxx

xxx

(b) for initiating Departmental proceedings and before taking a final decision in the vigilance case against the specified category of public servants.”

37. Clause 1.6.3 elaborately describes the procedure for first stage and second stage advice and is as follows:

“1.6.3 Departmental proceedings:

The Commission tenders its advice at two stages:

(a) First Stage Advice (FSA):

The Commission is required to be consulted:

- (1) in all cases where vigilance angle is present and in respect of the public servants specified in Section 8(2) of CVC Act, 2003 [Category-A], after conclusion of preliminary inquiry / investigation and before the issue of charge-sheet;*
- (2) where an Investigation Report on a complaint forwarded by the Commission has been called for, the CVO is required to submit the Investigation Report to the Commission for advice;*
- (3) in following cases for public servants other than Category-A:*
 - (i) in Composite cases, wherein public servants other than Category-A [i.e. Category-B] are also involved along with those belonging to Category-A and wherein vigilance angle is present.*
 - (ii) where there is difference of opinion between the CVO and the Chief Executive of the Organisation,*

the matter is required to be referred to the Commission for advice.

(b) Second Stage Advice (SSA):

- (1) In all such cases where First stage advice has been tendered, on conclusion of oral inquiry after issue of charge-sheet but before a final decision is taken by competent authority, the Commission is required to be consulted for second stage advice. (Subject to exception & exemptions mentioned below)*
- (2) Further, in respect of other cases where there is difference of opinion between the CVO and the Disciplinary Authority, the Commission is also required to be consulted.”*

38. Clause 7.25 refers to the procedure for taking action on the inquiry report. Under Clause 7.25.2, on receipt of the report and record of the inquiry, the Disciplinary Authority forwards a copy of the report to the charged officer giving an opportunity to represent. It is open to the Disciplinary Authority under Clause 7.25.3 to disagree with the finding of the Inquiry Officer and record its own findings and the reasons for disagreement, which too shall be provided to the charged officer. Clause 7.25.5 is relevant to the present case and prescribes that if the Disciplinary Authority arrives at a conclusion which is not in conformity with the Commission's first stage advice, the case will be forwarded to the Commission along with tentative views, for second stage advice. Relevant Clause is as under:

“7.25.5 If after considering the report of Inquiring Authority or after considering the reply of Government Servant to Inquiring

Authority report, the Disciplinary Authority arrives at a conclusion which is not in conformity with Commission's first stage advice, the case will be forwarded to the Commission along with tentative views, for second stage advice/reconsidered advice."

39. Clause 7.28 prescribes the procedure for obtaining second stage advice. As per Clause 7.28.1 in cases where the Disciplinary Authority, on conclusion of disciplinary proceedings, proposes to impose a penalty, which is in line with the first stage advice, in respect of officers falling within the jurisdiction of the Commission, second stage advice is not required and cases can be dealt with at the level of the CVO of the concerned Department. Clause 7.28.4 provides a checklist of the material which is required to be furnished to CVC while seeking the second stage advice. Clause 7.28.4 is as under:

***"7.28.4 Materials to be furnished for second stage advice:**
Following material should be furnished to the Commission while seeking its second stage advice:*

- (i) A copy of the charge sheet issued to the public servant;*
- (ii) A copy of the Inquiry Report submitted by the Inquiring Authority (along with a spare copy for the Commission's records);*
- (iii) The entire case records of the inquiry, viz. copies of the depositions, daily order sheets, exhibits, written briefs of the Presenting Officer and the Charged Officer;*
- (iv) Comments of the CVO and the Disciplinary Authority on the assessment of evidence done by the Inquiring Authority and also on further course to be taken on the Inquiry Report."*

40. Followed by the above Clause is Clause 7.29 which deals with issue of final order on the report of the Inquiring Authority. Clause 7.29.1 is as follows:

“7.29.1 It is in the public interest as well as in the interest of the employees that disciplinary proceedings should be dealt with expeditiously. At the same time, the Disciplinary Authorities must apply their mind to all relevant facts which are brought out in the inquiry before forming an opinion about the imposition of a penalty, if any, on the Government servant. In cases which do not require consultation with the Central Vigilance Commission or the UPSC, it should normally be possible for the Disciplinary Authority to take a final decision on the inquiry report within a period of 3 months at the most. In cases where the Disciplinary Authority feels that it is not possible to adhere to this time limit, a report may be submitted by him to the next higher authority indicating the additional period within which the case is likely to be disposed of and the reasons for the same. In cases where consultation with the UPSC and the CVC is required, every effort should be made to ensure that such cases are disposed of as quickly as possible.”

41. Clause 7.29.2 postulates that after taking the advice of the UPSC, where it is consulted, Disciplinary Authority will decide whether the Government Servant should be exonerated or a penalty should be imposed upon him.

42. Therefore, the entire scheme of the CVC Manual when read holistically leads this Court to conclude that the CVC advice, when applicable to a particular Organization/Department is required to be taken at two stages. First stage advice is taken prior to the issuance of chargesheet i.e. initiation of disciplinary proceedings. Second stage advice is taken before the Disciplinary Authority takes a final decision to exonerate or impose a penalty on the charged officer, based on the

inquiry report. There is no provision in the Manual which permits taking second stage CVC advice after the final order of exoneration. The reasons are manifold. The purpose of second stage advice is to enable the Disciplinary Authority to take a decision on the quantum of penalty and to ensure that the action of the Disciplinary Authority is in line with the first stage advice of the CVC. Also, the advice being one in the context of quantum of penalty as well, cannot be sought or given once a person is exonerated and has no allegations or charge against him. Relevant in this regard would be to refer to the Circular No.014-VGL-061 dated 03rd December, 2014 as under:-

“The Commission, at present, is being consulted at two stages in vigilance cases / disciplinary proceedings, i.e. first stage advice is obtained on the investigation reports, and second stage advice is obtained before a final decision is taken at the conclusion of the proceedings.

2. The Commission vide its Office Order No. 03/01/10 dated 28.01.2010 had earlier dispensed with the requirement of obtaining second stage advice in respect of officers not falling within the jurisdiction of the Commission in composite cases wherein, first stage advice had been tendered in respect of all categories of officers involved. Cases of such officers are presently required to be referred only if the disciplinary authority's (DA) opinion/views is at variance with the Commission's advice. Further, vide its Circular No.17/12/12 dated 07.12.2012, the Commission had dispensed with consultation at second stage on conclusion of disciplinary proceedings in respect of Group 'A' officers of Central Government, members of all India Services and such categories of officers wherein the UPSC is required to be consulted as per extant rules.

3. The Commission on a further review of the consultation mechanism and to provide for speedy finalization of disciplinary proceedings, has now decided to

dispense with the consultation for second stage advice of the commission in cases where the disciplinary authority (DA), on conclusion of disciplinary proceedings, proposes to impose a penalty which is in line with the Commission's first stage advice in respect of officers falling within the jurisdiction of the Commission also. Such cases would henceforth be dealt at the level of the CVO and DA concerned in the Organisation/Department. However, the CVO should forward an action taken report alongwith a copy of IO's findings and the final order issued by DA in all such cases of officers for Commission's record. It is further clarified that all such cases where the disciplinary authority proposes to take any action which is at variance with the Commission's first stage advice would continue to be referred to the Commission for obtaining second stage advice."

43. In the present case, the Petitioner stands exonerated by the order of the Disciplinary Authority, after which the Authority has become 'functus officio' and at this stage, it is not open to NII to argue that the Disciplinary Proceedings have not concluded as they are awaiting the CVC advice.

44. In view of the above, I hold that the inquiry proceedings initiated against the Petitioner vide Charge Memorandum dated 14.03.2019 under Rule 14 of the CCS (CCA) Rules stand concluded and have culminated into exoneration of the Petitioner. Accordingly the impugned communication dated 30.04.2020 whereby the NII has informed the Petitioner that proceedings are pending is quashed and set aside. It is further directed that Vigilance Clearance Certificate shall be issued by NII within a period of four weeks from today, as it is not the case of NII that there is any other case pending against the Petitioner.

45. Writ Petition is allowed in the above terms.
46. All pending applications are disposed of accordingly.

JYOTI SINGH, J

DECEMBER 4th, 2020

yo/rd

